

APPENDIX B
STATEMENT OF WORK

STATEMENT OF WORK
Peter Cooper Landfill Site
Village of Gowanda, Cattaraugus County, New York

I. WORK TO BE PERFORMED

The objectives of the work (hereinafter "Work," as defined in Section IV of the Consent Decree (the "Consent Decree") to which this Statement of Work ("SOW") is attached) to be conducted at the Peter Cooper Landfill Site (hereinafter referred to as "the Site") are to:

- Reduce or eliminate any direct contact threat associated with the contaminated soils/fill;
- Minimize or eliminate contaminant migration from contaminated soils to the groundwater; and
- Minimize or eliminate contaminant migration from groundwater to Cattaraugus Creek.

These objectives shall be met through implementation of the remedy selected in the Environmental Protection Agency's (EPA's) Record of Decision (ROD) at the Site issued September 30, 2005, attached as Appendix A to the Consent Decree. The Settling Defendants shall finance and perform the Work in accordance with the Consent Decree, the ROD, and this SOW, including all terms, conditions and schedules set forth herein or developed and approved hereunder.

- The major components of the Selected Remedy on the Peter Cooper Landfill Site follow: Excavating the three hot-spot areas and consolidating them within the Elevated Fill Subarea, then capping the 5-acre Elevated Fill Subarea of the ILA with a low permeability equivalent design barrier cap, consistent with the requirements of 6 NYCRR Part 360, including seeding with a mixture to foster natural habitat.
- Post-excavation confirmatory soil sampling;
- Backfilling of excavated areas with clean fill;
- Collecting the leachate from the seeps, pretreating the leachate as necessary, then discharging the leachate to the POTW collection system for further treatment and discharge. As a contingency, if treatment of the leachate in the POTW is not available, it would be treated and discharged to Cattaraugus Creek. The specific treatment and disposal option will be further evaluated during the remedial design phase;
- Installing a groundwater diversion system to limit groundwater migration through the Elevated Fill Subarea. However, should additional data collected in the remedial design phase of the project support the conclusion that the installation of a diversion wall will result in a minimal increase in the collection of contaminants by the leachate collection system, the diversion wall would not be installed;
- Installing a passive gas venting system for proper venting of the 5-acre Elevated Fill

EPA.

2. **PROJECT COORDINATOR**

Within twenty (20) calendar days after lodging of this Consent Decree, Settling Defendants shall notify EPA, in writing, of the name and title of the Project Coordinator who may be an employee of the Supervising Contractor. The Project Coordinator shall be responsible for the day to day management of all Work to be performed pursuant to this Consent Decree. The Project Coordinator shall have adequate technical and managerial experience to manage all Work described in this Statement of Work and under this Consent Decree. The Project Coordinator shall be knowledgeable at all times about all matters relating to activities regarding the RD and RA. The Project Coordinator shall be the primary contact for EPA on all matters relating to Work at the Site and should be available for EPA to contact during all working days. The Project Coordinator shall not be an attorney.

IV. **REMEDIAL DESIGN ACTIVITIES**

The RD activities to be performed in the implementation of the selected remedy for the Site include, but are not limited to, the following:

- A. Conduct soil sampling on the Site to characterize the extent of contaminated material that needs to be removed to satisfy the RA objectives. The sampling will include testing for contaminants for which EPA has established cleanup goals.
- B. Develop plans and specifications to excavate contaminated surface and subsurface soils which exceed cleanup goals specified in the ROD.
- C. Develop plans and specifications to consolidate the excavated soil within the 5-acre Elevated Fill Subarea of the inactive landfill area.
- D. Develop plans and specifications to backfill excavated areas.
- E. Develop plans and specifications for the performance of air monitoring during construction/remedial activities at the Site to ensure that air emissions resulting from the activities meet applicable or relevant and appropriate air emission requirements.
- F. Develop plans and specifications for the installation of a passive gas venting system for proper venting of the 5-acre Elevated Fill Subarea of the inactive landfill area.
- G. Develop plans and specifications to collect leachate and to determine where the leachate will be treated and disposed.

be performed during the RD phase, consistent with this SOW, the ROD, and the Consent Decree. At a minimum, the QAPP shall provide a plan for sampling surface and subsurface soils to define the specific limits of the contamination.

2. All sampling, analysis, data assessment, and monitoring shall be performed in accordance with the *Region II CERCLA Quality Assurance Manual*, Revision 1, EPA Region 2, dated October 1989, and any updates thereto and the guidelines set forth in the Consent Decree. All testing methods and procedures shall be fully documented and referenced to established methods or standards.
3. The QAPP shall also specifically include the following items:
 - a. An explanation of the way(s) the sampling, analysis, and monitoring will produce data for the RD phase;
 - b. A detailed description of the sampling, analysis, and testing to be performed, including sampling methods, analytical and testing methods, sampling locations and frequency of sampling;
 - c. A map depicting sampling locations; and
 - d. A schedule for performance of specific tasks.
4. In the event that additional sampling locations and analyses are utilized or required, Settling Defendants shall submit to EPA an addendum to the QAPP for approval by EPA.
5. The QAPP shall address the following elements:

Project Management

- a. Title and Approval Sheet
- b. Table of Contents and Document Control Format
- c. Distribution List
- d. Project/Task Organization and Schedule
- e. Problem Definition/Background
- f. Project/Task Description
- g. Quality Objectives and Criteria for Measurement Data
- h. Special Training Requirements/Certification
- i. Documentation and Records

Measurement/Data Acquisition

- j. Sampling Process Design

in on-site screening analyses, Settling Defendants must submit to EPA a "Non-CLP Superfund Analytical Services Tracking System" form for each laboratory utilized during a sampling event, within thirty (30) days after receipt of the analytical results. Upon completion, such documents shall be submitted to the EPA Project Coordinator, with a copy of the form and transmittal letter to:

Regional Sample Control Center Coordinator
EPA Region 2
Division of Environmental Science & Assessment
2890 Woodbridge Avenue, Bldg. 209, MS-215
Edison, NJ 08837

- c. The laboratory utilized for analyses of samples must perform all analyses according to accepted EPA methods as documented in the *Contract Lab Program Statement of Work for Organic Analysis*, (OLM04.3) or the latest revision, and the *Contract Lab Program Statement of Work for Inorganic Analysis*, (ILM05.3) or the latest revision, or other EPA approved methods. Information on the Superfund Analytical Services/Contract Laboratory Program is available at <http://www.epa.gov/superfund/programs/clp/methods.htm>
- d. Unless indicated otherwise in the approved QAPP, all data will be validated upon receipt from the laboratory.
- e. Unless indicated otherwise in the approved QAPP, submission of the validation package (checklist, report, and Form I containing the final data) to EPA, prepared in accordance with the provisions of Subparagraph g., below.
- f. Assurance that all analytical data that are validated as required by the QAPP are validated according to the procedures stated in the *EPA Region II Contract Lab Program Organics Data Review and Preliminary Review* (SOP #HW-6, Revision 11), dated June 1996, or the latest revision, and the *Evaluation of Metals Data for the Contract Laboratory Program* (SOP #HW-2, Revision 11), dated January 1992 or the latest revision, or EPA-approved equivalent procedures. Region 2 Standard Operating Procedures are available at: <http://www.epa.gov/region02/smb/sops.htm>
- g. Unless indicated otherwise in the approved QAPP, Settling Defendants shall require deliverables equivalent to CLP data packages from the laboratory for analytical data. Upon EPA's request, Settling Defendants shall submit to EPA the full documentation (including raw data) for this analytical data. EPA

definitions of the movement of zones;

- f. Description of decontamination procedures for personnel and equipment, and handling and removal of disposable clothing or equipment;
- g. Incidental emergency procedures which address emergency care for personnel injuries and exposure problems, and containment measures. These procedures shall include evacuation routes, internal and external communications procedures for response to fire, explosion, or other emergencies, the name of the nearest hospital and the route to that hospital. Local agencies with the capability to respond to emergencies shall be identified and their capabilities shall be described. A description of the procedures for informing the community of these measures shall be outlined.
- h. Description of the personnel medical surveillance program in effect;
- i. Description of monitoring for personnel safety;
- j. Description of routine and special personnel training programs; and
- k. Description of an air monitoring program to determine concentrations of airborne contaminants to which workers on-site and persons near the site boundary may be exposed. The results of work-zone air monitoring may be used as a trigger for implementing site-boundary air monitoring, additional control measures, and/or cessation of work.

C. Description of Remedial Design Tasks

The RD Work Plan shall include a detailed description of all other RD tasks (see Sections IV. and V., above) to be performed, along with a schedule for performance of those tasks. Such tasks shall include, at a minimum, the preparation of the RD Reports required by Section VII., below, and tasks necessary to ensure compliance with ARARs, as outlined herein and in the ROD. The RD Work Plan shall include an outline of the requirements of the RD Reports.

1. Access and Other Approvals

The RD Work Plan shall include descriptions of any approvals which Settling Defendants will need to comply with the Consent Decree, with the exception of those approvals needed from the EPA. This description shall detail how such approvals will be sought, and shall include a schedule for

schedule set forth in the approved RD Work Plan. Each RD report shall include a discussion of the design criteria and objectives, with emphasis on the capacity and ability to meet design objectives successfully. Each report shall also include the plans and specifications that have been developed at that point in time, along with a design analysis. The design analysis shall provide the rationale for the plans and specifications, including results of all sampling and testing performed, supporting calculations and documentation of how these plans and specifications will meet the requirements of the ROD and shall provide a discussion of any impacts these findings may have on the RD. The design reports shall also include the following items (to the extent that work has been performed regarding the items):

1. A technical specification for photographic documentation of the remedial construction work;
2. A discussion of the manner in which the RA will achieve the Performance Standards;
3. A plan for establishing institutional controls (*i.e.*, deed restrictions); and
4. A draft schedule for RA activities, and a preliminary schedule for operation and monitoring activities.

B. Additional Preliminary Remedial Design Report Requirements

The preliminary RD report shall include; the design criteria, a discussion and evaluation of the RD activities listed under Section IV., above, and their results, preliminary design drawings showing general arrangement of all RA work planned, and, to the extent available, items C.1. and C.2 below.

C. Additional Pre-Final and Final Remedial Design Report Requirements

The pre-final and final RD reports shall include final plans and specifications, and, shall also include:

1. A discussion of the manner in which the design components detailed in Section IV., above, for the RA are considered in the design;
2. Table of Contents for the specifications, including a listing of items from the Construction Specifications Institute master format that are expected to be included in the construction specifications. This master format is presented in the Construction Specifications Institute's *Manual of Practice*, 1985 edition, available from the Construction Specifications Institute, 601 Madison Street, Alexandria, Virginia 22314;
3. Engineering plans representing an accurate identification of existing site conditions and an illustration of the work proposed. Typical items to be

property easements and design completion;

5. Drawings of all proposed equipment, improvements, details and all other construction and installation items to be developed in accordance with the current standards and guidelines of the State of New York. Drawings shall be of standard size, approximately 24" x 36". A list of drawing sheet titles will be provided;
6. Engineering plans (as necessary) indicating, at a minimum, the following:
 - a. Site security measures;
 - b. Roadways; and
 - c. Electrical, mechanical, structural, as required.
7. Any value engineering proposals.
8. Piping & instrumentation diagrams, as necessary, showing all equipment and control systems;
9. An RA Operation and Maintenance (O&M) Plan. The RA O&M Plan shall be prepared in accordance with the Superfund Remedial Design and Remedial Action Guidance, OSWER Directive 9355.0-4A. The RA O&M Plan shall include, but not be limited to, the following:
 - a. a description of the personnel requirements, responsibilities, and duties, including a discussion for training, lines of authority;
 - b. a description of all construction-related sampling, analysis, and monitoring to be conducted under the Consent Decree; and
 - c. a description of all RA-related monitoring requirements associated with the groundwater treatment system.
10. A Construction Quality Assurance Project Plan (CQAPP), which shall detail the approach to quality assurance during construction activities at the Site, shall specify a quality assurance official (QA Official), independent of the RA Contractor, to conduct a quality assurance program during the construction phase of the project. The CQAPP shall address sampling, analysis, and monitoring to be performed during the remedial construction phase of the Work. Quality assurance items to be addressed include, at a minimum, the following:
 - a. Inspection and certification of the Work;
 - b. Measurement and daily logging;

EPA in writing of the name, title, and qualifications of any construction contractor proposed to be used in carrying out work under this Consent Decree. With respect to any proposed construction contractor, Settling Defendants shall demonstrate that the proposed construction contractor has a quality system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs (American National Standard, January 5, 1995), by submitting a copy of the proposed project manager's QMP. The QMP should be prepared in accordance with the specifications set forth in "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA shall thereafter provide written notice of the name(s) of the contractor(s) it approves, if any. Settling Defendants may select any approved contractor from that list and shall notify EPA of the name of the contractor selected within twenty-one (21) days of EPA's designation of approved contractors. If at any time Settling Defendants proposes to change the construction contractor, Settling Defendants shall notify EPA and shall obtain approval from EPA as provided in this paragraph, before the new construction contractor performs any work under this Consent Decree. If EPA disapproves of the selection of any contractor as the construction contractor, Settling Defendants shall submit a list of contractors that would be acceptable to them to EPA within thirty (30) days after receipt of EPA's disapproval of the contractor previously selected.

- B. Within sixty (60) days of the award of the RA contract, Settling Defendants shall submit an RA Work Plan for remedial construction activities. The RA Work Plan shall include, at a minimum, the following items:
1. If applicable, a "Request for Modification of Approved Final RD Report," including any requests for modification of the approved Final Design Report, based on construction methods identified by the contractor(s), or proposed modification of the construction schedule developed under Section VII., above, or any other requests for modification, subject to EPA approval in its sole discretion.
 2. A Site Management Plan (SMP) for RA activities. The SMP for RA shall include, at a minimum, the following items:
 - a. Tentative identification of the RA Project Team (including, but not limited to the Construction Contractor).
 - b. A final schedule for the completion of the RA and all major tasks therein, as well as a schedule for completion of required plans, and other deliverables (see Section V. C., above).
 - c. Methodology for implementation of the Construction Quality Assurance Project Plan (developed during the RD).

- (3) Procedures for scheduling and managing submittals, including those of subcontractors, off-site fabricators, suppliers, and purchasing agents; and
 - (4) Reporting procedures including frequency of reports and report formats.
 - h. Procedures to be used to determine whether performance standards are being achieved, and reporting procedures and frequency for results of such testing.
- 3. A Quality Assurance/Quality Control Project Plan (QAPP) for the Remedial Construction phase of the Work shall be prepared consistent with EPA *Requirements for Quality Assurance Project Plans for Environmental Data Operations*, (EPA QA/R-5, October 1998) (see Section V. A., above, for QAPP requirements).
- 4. An updated HSCP for the RA phase of the Work (see Section V. B., above, for HSCP requirements). The HSCP shall address health and safety measures to be implemented and observed by construction personnel, as well as recommended health and safety measures for the adjacent community and general public. The HSCP shall include the name of the person responsible in the event of an emergency situation, as well as the necessary procedures that must be taken in the event of an emergency, as outlined in the Consent Decree.

C. Approval of Remedial Action Work Plan

EPA will either approve the RA Work Plan or require modification of it in accordance with the procedures set forth in Section XI of the Consent Decree.

D. Performance of Remedial Action

- 1. Upon the EPA's written approval of the RA Work Plan, Settling Defendants shall initiate and perform the remedial action in accordance with the RA Work Plan and the approved Final Design Report, which includes the approved RA schedule.
- 2. During performance of the RA, Settling Defendants may identify and request EPA approval for field changes to the approved RA Work Plan, Final Design Report and RA schedule, as necessary, to complete the work. EPA will approve, disapprove, or require modification of any requests for field changes in accordance with the procedures set forth in Section XI of the Consent Decree.

completeness of the construction and its consistency with the RD Reports, the Consent Decree, the ROD and applicable federal and state laws, rules, and regulations.

- B. Following the pre-final inspection, EPA will either specify the necessary corrective measures to the construction phase of the RA, or determine that construction is complete. If EPA requires corrective measures, Settling Defendants shall undertake the corrective measures according to a schedule approved by EPA. Within fourteen (14) days after completion of the construction of the corrective measures, Settling Defendants and their contractor(s) shall be available to accompany EPA personnel or their representatives on an inspection as provided for in the preceding paragraph. Said inspection will be followed by further directions and/or notifications by EPA as provided above in this paragraph.
- C. Within twenty-one (21) days of the date that Settling Defendants concludes that they have met the Performance Standards as specified in the ROD and this SOW, Settling Defendants shall schedule and conduct a final inspection to be attended by Settling Defendants, EPA, NYSDEC, and/or their respective representatives. The final inspection will consist of a walk-through of the project to determine the completeness of the RA and its consistency with the ROD, this SOW, and the consent decree. EPA may direct Settling Defendants to correct any deficiencies identified during the inspection. Settling Defendants shall implement the tasks necessary to correct any deficiencies in accordance with the specifications and schedules established by EPA.
- D. Within fourteen (14) days of completion of the tasks, Settling Defendants shall be available to accompany EPA and NYSDEC personnel and/or their respective representatives on a follow-up inspection. Within thirty (30) days of EPA's determination that construction is complete as set forth in Subsection B., above, Settling Defendants shall submit a Draft RA Report, as set forth in Subsection E., below.
- E. The Draft RA Report set forth in Subsection D, above, shall include the following sections:
 - 1. Introduction
 - a. Include a brief description of the location, size, environmental setting, and operational history of the Site.
 - b. Describe the operations and waste management practices that contributed to contamination of the Site.
 - c. Describe the regulatory and enforcement history of the Site.

sampling and confirmation-of-performance results; required inspections; demobilization; and startup of post-construction operation & maintenance activities.

5. Performance Standards and Construction Quality Control

- a. Describe the overall performance of the technology in terms of comparison to Performance Standards.
- b. For treatment remedies, identify the quantity of material treated, the strategy used for collecting and analyzing samples, and the overall results from the sampling and analysis effort.
- c. Provide an explanation of the approved construction quality assurance and construction quality control requirements or cite the appropriate reference for this material. Explain any substantial problems or deviations.
- d. Provide an assessment of the performance data quality, including the overall quality of the analytical data, with a brief discussion of QA/QC procedures followed, use of a QAPP, comparison of analytical data with data quality objectives.

6. Final Inspection and Certifications

- a. Report the results of the various RA contract inspections, and identify noted deficiencies.
- b. Briefly describe adherence to health and safety requirements while implementing the RA. Explain any substantial problems or deviations.
- c. Summarize details of the institutional controls (e.g., the type of institutional control, who will maintain the control, who will enforce the control).
- d. Describe results of pre-certification inspection.
This section shall include a certification statement, signed by a responsible corporate official of one or more of the Settling Defendants or by the Settling Defendants' Project Coordinator, which states the following:

"To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including

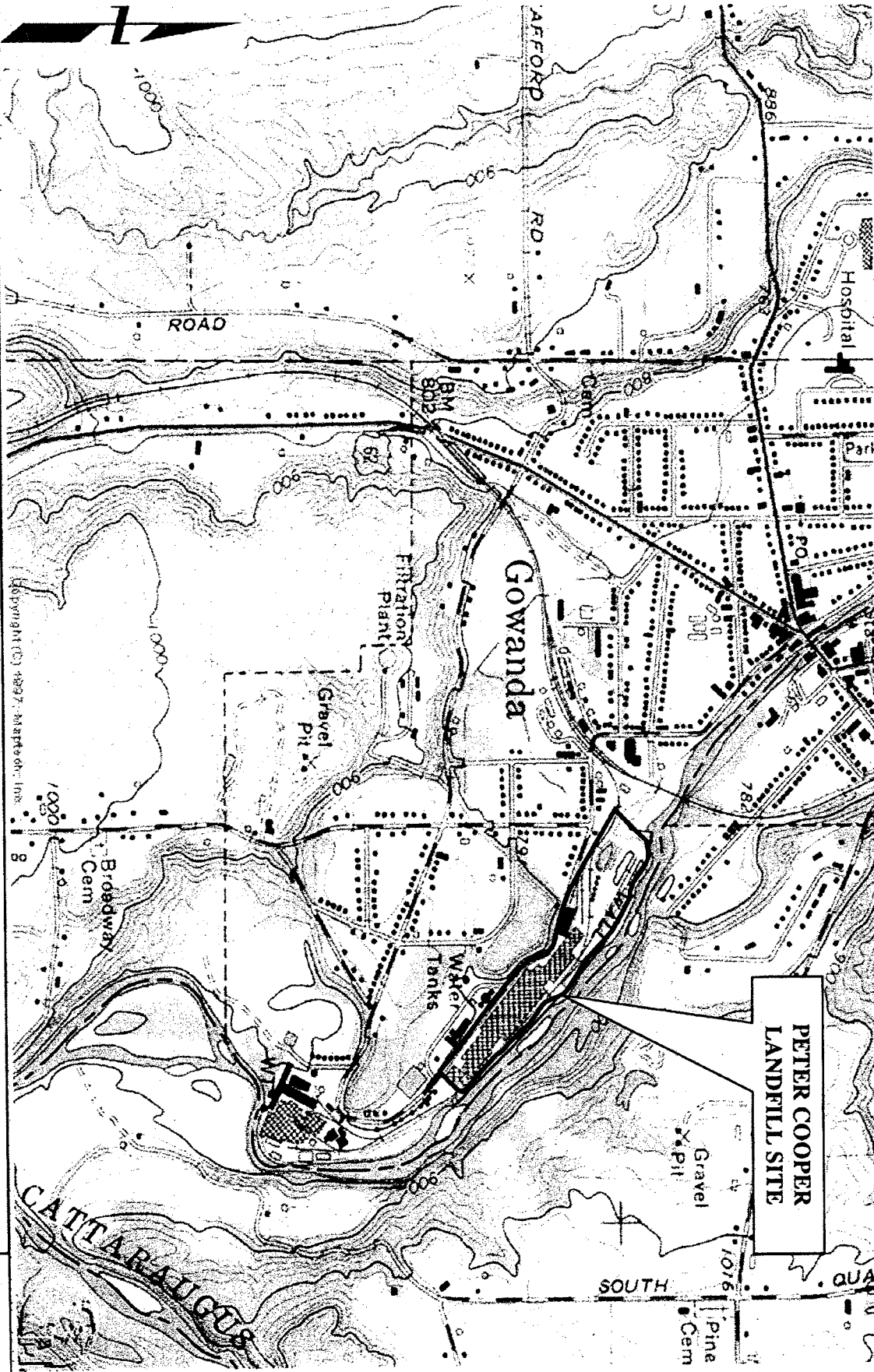
- c. Identify the operating parameters specified by the remediation contractor that most affected the cost and performance, the corresponding values measured for each parameter, and the procedures used for measuring those parameters.
 - d. Provide a detailed breakout of the actual RA capital costs.
 - e. Provide supplemental information in appendices to the RA Report. These could include a map of the Site, supplemental performance information, and a list of references.
- F. EPA will approve the Draft RA Report, thus making it the Final RA Report, require modifications, and/or require corrective measures to fully and properly implement the RA(s), in accordance with Subsection X.B. or C., above.

XI. PERFORMANCE OF CONTINUED OPERATION OF THE REMEDIAL ACTION

Upon EPA's approval of the Draft Remedial Action Report (see Section XI. F., above), Settling Defendant shall continue remedial action and monitoring activities in accordance with the approved O&M Manual.

APPENDIX C

MAP OF THE SITE



**PETER COOPER
LANDFILL SITE**

SITE BOUNDARY MAP

**Peter Cooper Landfill Site
Gowanda, NY**

0 1200 Feet

USGS Topographic Map
Gowanda Quadrangle

FIGURE 1

Non-GDS

APPENDIX D – COMPLETE LIST OF SETTLING DEFENDANTS

1. Wilhelm Enterprises Corporation
2. New York State Electric & Gas Corporation
3. Jimcar Development, Inc.
4. James Dill
5. Brown Shoe Company, Inc.
6. Seton Company
7. GST AutoLeather
8. Prime Tanning Company, Inc.
9. Viad Corporation
10. ConAgra Grocery Products Company, Inc.
11. Leucadia National Corporation
12. Beggs & Cobb Corporation
13. Wolverine Worldwide, Inc.
14. Genesco, Inc.
15. Albert Trostel & Sons Co.
16. Blackhawk Leather Ltd.
17. Eagle Ottawa, LLC
18. S.B. Foot Tanning Company
19. Horween Leather Company

APPENDIX E – COMPLETE LIST OF OWNER SETTLING DEFENDANTS

1. New York State Electric & Gas Corporation
2. Jimcar Development, Inc.
3. James Dill

APPENDIX F – COMPLETE LIST OF NON-PERFORMING SETTling DEFENDANTS

1. Wolverine Worldwide, Inc.
2. Albert Trostel & Sons Co.
3. Blackhawk Leather Ltd.
4. Eagle Ottawa, LLC

APPENDIX G – COMPLETE LIST OF PERFORMING SETTling DEFENDANTS

1. Wilhelm Enterprises Corporation
2. New York State Electric & Gas Corporation
3. Jimcar Development, Inc.
4. James Dill
5. Brown Shoe Company, Inc.
6. Seton Company
7. GST AutoLeather.
8. Prime Tanning Company, Inc.
9. Viad Corporation
10. ConAgra Grocery Products Company, Inc.
11. Leucadia National Corporation
12. Beggs & Cobb Corporation
13. Genesco, Inc.
14. S.B. Foot Tanning Company
15. Horween Leather Company

APPENDIX H

FORM OF EASEMENT

**ENVIRONMENTAL PROTECTION EASEMENT
AND
DECLARATION OF RESTRICTIVE COVENANTS**

This Environmental Protection Easement and Declaration of Restrictive Covenants is made this _____ day of June, 2008, by and between Palmer Street Gowanda 2007, Inc. ("Grantor"), a New York corporation, having an address at 333 International Drive Ste B-4 Williamsville, NY 14221, and Wilhelm Enterprises Corporation ("Wilhelm"), a New York corporation having an address at 333 International Drive Ste B-4 Williamsville, NY 14221; New York State Electric & Gas Corporation, being a subsidiary of Energy East Corporation, a New York Corporation having an address at P.O. Box 5224, 18 Link Drive, Binghamton, NY 13902; Prime Tanning Company, Inc., a corporation organized and existing under the laws of the State of Maine having an address at 20 Sullivan St., Berwick, ME 03901; Seton Company, a Pennsylvania corporation having an address at 30445 Northwestern Hwy., Suite 225, Farmington Hills, MI 48334; Viad Corp, an Arizona corporation having an address at 1850 North Central Avenue, Suite 800, Phoenix, AZ 85004-4545; GST AutoLeather, a Michigan corporation having an address at 20 Oak Hollow Drive, Suite 300, Southfield, MI 48033; Brown Shoe Company, Inc., a Missouri corporation having an address at 8300 Maryland Avenue, P.O. Box 29, St. Louis, MO 63166-0029; Con Agra Grocery Products Company, Inc., a Nebraska corporation having an address at One ConAgra Drive Omaha, NE 68102; Beggs & Cobb Corporation, a Delaware corporation having an address at 139 Lynnfield St., Peabody, MA 01960; Genesco, Inc., a Tennessee corporation having an address at P.O. Box 731, Suite 490 Nashville, TN 37202-0731; Leucadia National Corporation, a New York corporation having an address at 315 Park Avenue South, New York, NY 10010; S.B. Foot Tanning Company, a Minnesota corporation having an address at 805 Bench Street, Red Wing, MN 55066; and Horween Leather Company, a Illinois corporation having an address at 2015 Elston Avenue, Chicago, IL 60614, (collectively the "Grantees"); acting on their own behalf and for the benefit of third-party beneficiaries the United States of America, acting through the United States Environmental Protection Agency ("EPA"), and the State of New York, acting through the New York State Department of Environmental Conservation ("DEC") and the Village of Gowanda ("Village") (collectively, "Third-Party Beneficiaries").

WITNESSETH:

WHEREAS, Grantor is the owner of **ALL THAT TRACT OR PARCEL OF LAND** situate in the Village of Gowanda, Town of Persia, County of Cattaraugus and State of New York and conveyed to Jimcar Development Inc. by Warranty Deed dated April 14, 1988 from Peter Cooper Corporations, recorded in the Cattaraugus County Clerk's Office in Liber 879 of Deeds at Page 59 on April 19, 1988 as more particularly described in the attached Schedule A together with any

buildings and improvements thereon and appurtenances thereto (the "Property"); and

WHEREAS, the Property is part of the Peter Cooper (Gowanda) Superfund Site ("Site"), which the EPA, pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9605, placed on the National Priorities List, as set forth in Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 C.F.R. Part 300, by publication in the Federal Register on February 3, 2000; and

WHEREAS, in a Record of Decision dated September 30, 2005 (the "ROD"), the EPA selected a "response action" for the Site, which provides, in part, for the following actions at the Site:

- (1) excavation of impacted soil/fill from sub-areas on site and consolidation into an onsite landfill;
- (2) covering an existing 5-acre on-site landfill with a low-permeability cap;
- (3) installation of a passive gas venting system in conjunction with the cap system;
- (4) collection of groundwater and leachate, subject to potential pre-treatment if necessary, and discharge of same to the existing Village of Gowanda Sewage Treatment Plant ("GSTP");
- (5) stabilizing the bank of Cattaraugus Creek adjacent to the Site;
- (6) establishing through this instrument and deed restrictions certain institutional controls, environmental easements and restrictive covenants on future uses of the Site to:
 - (a) prevent use of groundwater on the Site for potable purposes, disruption, excavation or alteration of the cover system over the on-site landfill, or damage to or interference with the operation of the passive gas venting system,
 - (b) facilitate the performance of:
 - (i) long-term operation and maintenance of the cap, gas venting, and groundwater/leachate systems;
 - (ii) air, surface, and groundwater quality monitoring; and

(iii) Site condition evaluations as necessary to determine if a modification to the selected remedial action is necessary for protection of human health and the environment; and

(c) prevent the disturbance, destruction, interference with or obstruction of any aspects of the remedy or access provided herein as necessary to operate, maintain, monitor and/or repair the remedy at the Site.

WHEREAS, the Grantor herein grants a permanent easement: a) providing the right of unobstructed access over the Property to the Grantees for purposes of facilitating, implementing, and monitoring, maintaining, and the performance of other obligations that may arise and are necessary to, the response action for the Site; and b) imposing on the Property Restrictive Covenants that will run with the land for the purpose of protecting human health and the environment; and

WHEREAS, Grantor has and assumes no liability to the Grantees or the Third-Party Beneficiaries for any conditions existing at the Site but wishes to facilitate through this Environmental Protection Easement and Declaration of Restrictive Covenants the full cooperation of the Grantees with the EPA, and to provide access to the Site for implementation of all response actions at the Site as required pursuant to a Consent Decree entered into voluntarily by and between the Grantees and the United States of America to abate potential hazardous conditions at the Site;

NOW, THEREFORE:

1. Grant: Grantor, on behalf of itself, its heirs, successors and assigns, in consideration of the sum of Ten Dollars and no more, paid by Grantees, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, does:
 - (a) give, grant, covenant and declare in favor of the Grantees and nominated Third-Party Beneficiaries of this Grant that the Property shall be subject to the restrictions on use and rights of access set forth below, and
 - (b) give, grant, devise and convey to the Grantees and the nominated Third Party Beneficiaries the perpetual right to enforce said restrictions and rights, which restrictions and rights shall be of the nature and character, and for the purposes, hereinafter set forth.
2. Purpose: It is the purpose of this instrument to convey to the Grantees real property rights, as covenants to run with the land, in order to:

- (a) facilitate the remediation of past environmental contamination and to protect human health and the environment by reducing the risk of exposure to contaminants and to,
- (b) provide the EPA, and, if necessary, DEC, with rights as Third-Party Beneficiaries with the same rights as the Grantees may have under this instrument for purposes of taking action to protect human health and the environment as provided for herein.

3. Restrictions on use: The following restrictions apply to the use of the Property, as Restrictive Covenants that run with the land, are binding on the Grantor and its heirs, successors and assigns, and the Grantees and their heirs, successors and assigns, and all who take title to and possession of the Property hereafter.

- (a) The following activities are prohibited: the extraction of groundwater; any activities that would interfere with, or adversely affect, the integrity or protectiveness of the barrier cap covering the on-site landfill; any activities which would interfere with, or adversely affect, the integrity, protectiveness or function of the passive gas venting system; any activities which would interfere with, or adversely affect, the integrity or protectiveness of the surface/groundwater leachate collection system; the importation of backfill or soil fill cover which is inconsistent with the Soil/Fill Management Plan developed for the Site pursuant to the Consent Decree; and except as provided in subparagraph (b) hereof, digging into or disturbing the subsurface, except in areas specifically designated for the placement of utilities necessary to support the recreational use of the site; and except as provided in subparagraph (b) hereof constructing commercial buildings or appurtenant facilities not required pursuant to the remedial action plan for the Site; or the construction of residential facilities or any kind or character whatsoever.
- (b) the Property may be used only, and for no other purpose than, as a recreational area, whether improved by appurtenant facilities such that the property can be used as and becomes an active public park, or left in a more or less natural condition for use as a passive recreational area, but in no case or event shall the Property be disturbed by construction to improve it for use, or allow it to be improved for use, for residential, commercial, or industrial purposes, it being the intention of Grantor that this Property become a public park, whether active or passive, and be used for no other purpose.
- (c) Public use of the Property will not be authorized until there has been full compliance with all requirements of law applicable to its designated recreational use.

4. Modification or termination of restrictions: The Restrictive Covenants on use specified in the preceding paragraph of this instrument may only be modified, or terminated in whole or in part, in writing, by the Grantees or their successors and assigns, with the prior written consent of EPA and DEC, provided, however, that any modification or

termination of said restrictions shall not adversely affect the remedy selected by EPA for the Site.

5. Right of access: A right of access to the Property is hereby imposed upon the Property, being a Covenant to run with the land and surviving for perpetuity, from and binding on Grantor and its heirs, successors and assigns, and on the Grantees and their heirs, successors and assigns, and inuring to the benefit of the Grantees and their heirs, successors and assigns and the Third-Party Beneficiaries nominated herein. Such right of access shall be allowed at all reasonable times, provided prior written notification has been provided to the Village at least 3 days prior to access, except, in the case of an emergency, such notice may be provided telephonically and shall be provided at the earliest reasonable opportunity. The access provided herein allows the following activities:
- a) Excavation of impacted soil/fill from sub-areas on site and consolidation into an on-site landfill;
 - b) Covering an existing 5-acre on site landfill with a low-permeability equivalent design barrier cap, including seeding with a mixture to foster natural habitat;
 - c) Installation of a passive gas venting system in conjunction with a final cover system for the onsite landfill;
 - d) Construction, operation, maintenance (including if necessary potential leachate pre-treatment) and repairs of a groundwater/leachate collection system, and facilities necessary to discharge groundwater/leachate into the existing GSTP, and the construction of appurtenant buildings or facilities as necessary for the groundwater/leachate collection system;
 - e) Stabilization of the bank of Cattaraugus Creek adjacent to the Site;
 - f) Verifying any data or information relating to the environmental conditions of the Site;
 - g) Verifying that no action is being taken on the Property in violation of the terms of this instrument or of any federal or state environmental laws or regulations;
 - h) Conducting investigations under CERCLA relating to contamination on or near the Site, including, without limitation, sampling of air, water, sediments, soils; and
 - i) Implementing additional or new response actions under CERCLA.

6. Federal authority: Nothing in this document shall limit or otherwise affect EPA's rights of entry and access or EPA's authority to take response actions under CERCLA, the NCP, or other federal law.
7. No public access and use: No right of access or use by the general public to any portion of the Property is conveyed by this instrument.
8. Public notice: Grantor and its heirs, successors and assigns agree to include in each instrument conveying any interest in any portion of the Property, including but not limited to deeds, leases and mortgages, a notice which is in substantially the following form:

**NOTICE: THE INTEREST CONVEYED HEREBY IS
SUBJECT TO AN ENVIRONMENTAL PROTECTION
EASEMENT AND DECLARATION OF RESTRICTIVE
COVENANTS, DATED _____, 2008, RECORDED IN
THE CLERK'S OFFICE, COUNTY OF CATTARAUGUS,
ON _____, 2008, IN BOOK _____, PAGE _____, IN
FAVOR OF, AND ENFORCEABLE BY, GRANTEES, AND
BY THE UNITED STATES OF AMERICA, AND BY THE
STATE OF NEW YORK AS THIRD-PARTY
BENEFICIARIES.**

Within thirty (30) days of the date any such instrument of conveyance is executed, Grantor or its heirs, successors and assigns agree to provide Grantees and the EPA with a certified true copy of said instrument and, if it has been recorded in the public land records, its recording reference.

9. Enforcement: The Grantees and the Third-Party Beneficiaries shall be entitled to enforce the terms of this instrument by resort to specific performance. Such remedy shall be in addition to any and all other remedies available at law or in equity, including pursuant to CERCLA. Any forbearance, delay or omission to exercise Grantees' rights under this instrument in the event of a breach of any term of this instrument shall not be deemed to be a waiver by the Grantees of such term or of any of the rights of the Grantees under this instrument.
10. Additional Covenants: Grantor hereby covenants to Grantees and their heirs, successors and assigns, and to Third-Party Beneficiaries of this instrument, that the Grantor is lawfully seized in fee simple of the Property, that the Grantor has a good and lawful right and power to sell and convey the Property or any interest therein, and that the Property is free and clear of encumbrances except as otherwise disclosed to Grantees.
11. Notices: Any notice, demand, request, consent, approval, or communication under this

instrument that any party desires or is required to give to any other party shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:

Palmer Street Gowanda 2007, Inc.
c/o Lipman & Biltekoff, LLP
333 International Drive Suite B-4
Williamsville, New York 14221

To Grantees:

Wilhelm Enterprises Corporation
c/o Lipman & Biltekoff, LLP
333 International Drive Suite B-4
Williamsville, New York 14221

New York State Electric & Gas Corporation
c/o Elias Group
411 Theodore Fremd Avenue
Suite 102
Rye, NY 10580

Prime Tanning Company, Inc., Seton Company, Viad Corp, GST AutoLeather, Brown Shoe Company, Inc., Con Agra Grocery Products Company, Inc., Beggs & Cobb Corporation, Genesco, Inc., Leucadia National Corporation, S.B. Foot Tanning Company, and Horween Leather Company.
c/o Kelley Drye and Warren, LLP
3050 K Street NW Suite 400
Washington, DC 20007

A copy of each such communication shall also be sent to the following:

To EPA:

United States Environmental Protection Agency
Office of Regional Counsel
New York/Caribbean Superfund Branch
290 Broadway
New York, NY 10007
Attn: Peter Cooper Landfill Site Attorney

To the Village:

Village Clerk
Village of Gowanda
27 East Main Street
Gowanda, New York 14070

12. General provisions:

- a) Controlling law: The interpretation and performance of this instrument shall be governed by the laws of the State of New York and, if applicable, the United States. Any claim brought pursuant to this agreement shall be brought in the Eighth Judicial District of New York State Supreme Court or, the United States District Court for the Western District of New York, as applicable.
- b) Liberal construction: Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the grant to effectuate the purpose of this instrument and the policy and purpose of CERCLA. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.
- c) Severability: If any provision of this instrument, or the application of it to any person or circumstance, is found to be invalid, the remainder of the provisions of this instrument, or the application of such provisions to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.
- d) Entire agreement: This instrument sets forth the entire grant of rights and obligations, including rights of access, easements and restrictive covenants to run with the land and inure to the benefit of Third-Parties Beneficiaries and supersedes all prior discussions, negotiations, understandings, or agreements relating thereto, all of which are merged herein; provided that nothing in this instrument shall be deemed to alter or modify the Consent Decree entered into by and among the United States of America and the Grantees.
- e) No forfeiture: Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect. Further, no violation of the rights and obligations, including rights of access, easements and restrictive covenants set forth herein by any heir, successor or assign of the Grantor shall result in a forfeiture of title or revision of any interest from such heir, successor or assign to the Grantor.

f) Successors: The covenants, easements, terms, conditions, and restrictions of this instrument shall be binding upon, and inure to the benefit of, the parties hereto and their heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. The term "Grantor," wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document, identified as "Grantor" and their heirs, successors, and assigns. The term "Grantees," wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document, identified as "Grantee" and their heirs, successors, and assigns. The Third-Party Beneficiaries described herein are agencies and/or instrumentalities of the State of New York or the United States of America and wherever used herein, and any pronouns used in place thereof, shall include the entities named at the beginning of this document.

h) Captions: The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

i) Counterparts: The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by all parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

TO HAVE AND TO HOLD unto the Grantees and their heirs, successors and assigns forever.

IN WITNESS WHEREOF, Grantor has caused this instrument to be signed in its name.

Palmer Street Gowanda 2007, Inc.

By: Robert Wilhelm, President

Date: _____

Grantor's acknowledgment

STATE OF FLORIDA)

COUNTY OF _____) : ss

On the _____ day of _____ in the year 2008, before me, the undersigned personally appeared Robert Wilhelm, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public - State of New York
My Commission Expires: _____

THIS ENVIRONMENTAL EASEMENT IS HEREBY ACCEPTED BY:

Wilhelm Enterprises Corporation

By: _____

Robert Wilhelm, Its President

Date: _____

Grantee's Acknowledgment

STATE OF FLORIDA)
COUNTY OF _____) : ss

On the ____ day of _____ in the year 2008, before me, the undersigned personally appeared Robert Wilhelm, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public - State of New York
My Commission Expires: _____

New York State Electric & Gas Corporation

By: _____
Seth A. Davis, Agent and Counsel

Date: _____

Grantee's Acknowledgment

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) : ss

On the ____ day of _____ in the year 2008, before me, the undersigned personally appeared Seth A. Davis, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity as Agent and Counsel, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public - State of New York
My Commission Expires: _____

Prime Tanning Company, Seton Company, Viad Corp, GST AutoLeather, Brown Shoe Company, Inc., Con Agra Grocery Products Company, Beggs & Cobb Corporation, Genesco, Inc., Leucadia National Corporation, S.B. Foot Tanning Company, and Horween Leather Company

By: John L. Wittenborn, Agent and Counsel

Date: _____

Grantee's Acknowledgment

DISTRICT OF COLUMBIA)
) ss

On the _____ day of _____ in the year 2008, before me, the undersigned personally appeared John L. Wittenborn, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity as authorized agent, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public - State of New York
My Commission Expires: _____

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

Plaintiff,

v.

Wilhelm Enterprises Corporation;
New York State Electric & Gas
Corporation; Jimcar Development, Inc.;
James Dill; Brown Shoe Company, Inc.;
Seton Company; GST AutoLeather; Prime
Tanning Company, Inc.; Viad
Corporation; ConAgra Grocery Products
Company, Inc.; Leucadia National
Corporation; Beggs & Cobb Corporation;
Wolverine Worldwide, Inc.; Genesco, Inc.;
Albert Trostel & Sons Co.; Blackhawk
Leather Ltd.; Eagle Ottawa, LLC; S.B.
Foot Tanning Company; and Horween
Leather Company,

Defendants.

Civil Action No. 1:08-cv-00840 (RJA)

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of November 2008, I caused a copy of the foregoing
NOTICE OF LODGING OF PROPOSED CONSENT DECREE to be served by first-class
U.S. mail, postage prepaid, upon the following:

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James A. Dill
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Cattaraugus, NY 14719

s/ David L. Weigert
DAVID L. WEIGERT